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MAY 1 2000

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In re Application of
NAKATA, Toshiyuki *et al*
U.S. Application No.: 09/091,805
PCT No.: PCT/JP97/03833
Int. Filing Date: 23 October 1997
Priority Date: 24 October 1996
Attorney's Docket No.: MATS: 006
For: CHOKE

DECISION ON PETITION
UNDER 37 CFR 1.181

The decision is in response to applicants' "Response to Notice of Abandonment" filed via facsimile 15 March 2000. This is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 23 October 1997, applicants filed international application PCT/JP97/03833 claiming priority to a Japanese patent application filed 24 October 1996. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office on 30 April 1998. A Demand for the international preliminary examination was not filed. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 24 June 1998.

On 22 June 1998, applicants filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, an English translation; a preliminary amendment; a check of \$1,148.00 for the basic national fee, extra claims and a surcharge pursuant to 37 CFR 1.492(e); and authorization to charge any additional fees to Deposit Account No. 18-2056.

On 05 November 1998, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) to applicants indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) must be provided. A one-month time period for response was set.

On 10 December 1998, applicants purportedly filed a "Response to Missing Parts" which included an executed declaration, and a check of \$1,148.00 for the basic national fee, extra claims and a surcharge pursuant to 37 CFR 1.492(e).

On 22 December 1999, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to Form PCT/DO/EO/905 within the time period set.

On 15 March 2000, applicants filed the instant petition which was accompanied by, *inter alia*, a copy of a "Response to Missing Parts" purportedly filed 10 December 1998; a copy of an executed declaration; a copy of the postal receipt for documents filed 10 December 1998; a copy of counsel's check register; a copy of counsel's check statement indicating check No. 2993 was cashed 16 December 1998; and a copy of counsel's docket book.

DISCUSSION

MPEP 503 lists procedures for applicants to ensure receipt of any paper filed in the PTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The PTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. For example, the MPEP states each separate component, e.g., the number of pages of specification, number of claims (nonprovisional applications), number of sheets of drawings, cover sheet (provisional applications), etc. should be itemized on the postcard.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Here, applicants have provided a copy of their date-stamped filing receipt. The receipt clearly identifies the application by title, applicant, serial number and docket number. The receipt itemizes all papers filed in the PTO including the papers filed: Missing Parts, Declaration and a Check. The receipt is stamped "OIPE DEC 10 1998" across its face. Therefore, applicants have provided *prima facie* evidence that the documents were received by the PTO on 10 December 1998.

CONCLUSION

For the reasons stated above, the Notification of Abandonment mailed 22 December 1999 is VACATED and the abandonment is WITHDRAWN.

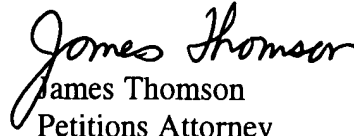
A review of PTO financial records indicate that a total of \$1,148 in extra fees was submitted in this application. It appears that counsel submitted the basic national fee, extra claims fees and surcharge twice. Counsel's Deposit Account 18-2056 will be credited \$1,148.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 23 October 1997, under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of **10 December 1998**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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